

MEMO ENDORSED

MICHAEL A. CARDOZO
Corporation Counsel

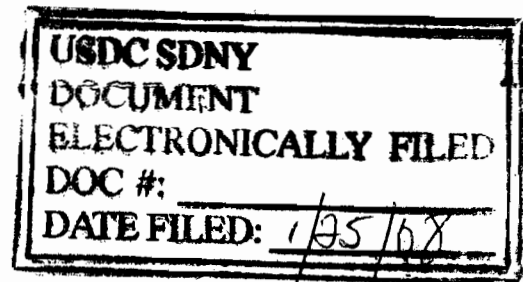
THE CITY OF NEW YORK
LAW DEPARTMENT
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NEW YORK, NY 10007

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January 24, 2008

By Hand Delivery

Hon. Theodore H. Katz
United States Magistrate Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007



Re: Burton v. City of New York et al.
Docket No. 06 CV 4064 (LAK) (THK)

Dear Judge Katz:

I am an Assistant Corporation Counsel in the Office of Michael A. Cardozo, Corporation Counsel of the City of New York, attorney for the defendants in the above-referenced discrimination action. I write to belatedly share my concerns about this litigation with the Court and respectfully request the Court's involvement with this matter. Pursuant to Your Honor's September 14, 2007 Order, discovery in this matter closed on December 21, 2007, and defendants' motion for summary judgment is due on January 31, 2008.

To date, despite the discovery deadline having passed, no discovery has been completed in this matter by either side, other than defendants' producing Rule 26 initial disclosures to the *pro se* plaintiff. Plaintiff has refused multiple times to appear for deposition in this action. When I spoke with plaintiff in early January she refused again to appear for deposition but agreed to withdraw this case with prejudice. Thereafter I mailed plaintiff a stipulation of withdrawal for her to sign and return to me for filing with the Court. Plaintiff did not return the stipulation. When I spoke with plaintiff again yesterday, she indicated she had changed her mind and would not withdraw this action, but was continuing to search for an attorney to represent her in this matter. She again refused to make herself available for a deposition saying she was too unwell to be deposed.

At this point, defendants are unable to move for summary judgment in this matter as plaintiff has not cooperated in the discovery process. Instead, defendants respectfully request a conference in this matter concerning plaintiff's discovery obligations if she is to continue to

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pursue this action. If plaintiff remains unwilling to make herself available for a deposition, defendants believe this case should be dismissed on a motion to dismiss for failure to prosecute. A schedule for this motion can be established at the conference, if necessary.

Thank you for your consideration of this request and I apologize to the Court for the lateness of this submission.

Respectfully submitted,

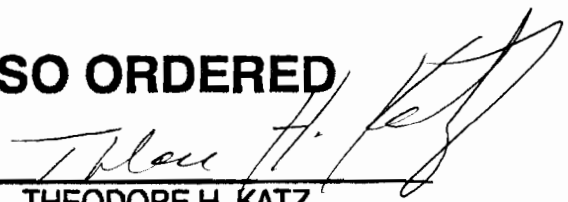

Joshua Fay
Assistant Corporation Counsel

cc: By Regular Mail
Mary Alice Burton
Plaintiff, *Pro Se*
100 Darrow Place, # 5A
New York, New York 10475
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*Plaintiff and Defendants' counsel
shall appear at a conference on
February 4, 2008 at 10:00 A.M.*

*Failure to appear shall
result in sanctions.*

1/25/08 **SO ORDERED**

THEODORE H. KATZ
UNITED STATES MAGISTRATE JUDGE